

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

4:13-CR-3078

vs.

FRANCISCO ALVARADO SANTOS,

Defendant.

ORDER

This matter is before the Court on the defendant's motion for appointment of counsel (filing 74). That motion will be denied.

The defendant is seeking the appointment of counsel to assist him in obtaining a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2) and U.S.S.G. Amend. 782. But there is no constitutional right to appointed counsel in sentence modification proceedings under § 3582(c). *United States v. Harris*, 568 F.3d 666, 669 (8th Cir. 2009). Nor does the defendant have a right to appointed counsel under the Criminal Justice Act, 18 U.S.C. § 3006A. *Harris*, 568 F.3d at 669. Whether to appoint counsel is, therefore, committed to the discretion of the Court. *See id.* And the Court declines to appoint counsel in this case because it is apparent that the motion the defendant wants to file would be without merit.

U.S.S.G. § Amend. 782 was effective November 1, 2014. The defendant was sentenced on April 14, 2015. Filing 72. And the Court uses the Guidelines Manual in effect on the date the defendant is sentenced. U.S.S.G. § 1B1.11(a). Accordingly, the defendant was sentenced pursuant to the *amended* Guidelines—Amendment 782's two-level reduction had already taken effect and was applied to him at sentencing. Filing 70 at 13-14, 22; filing 71; filing 73 at 1. He is entitled to no further reduction. Accordingly, any motion for a sentence reduction based on Amendment 782 would be without merit, and there is no basis for appointing counsel.

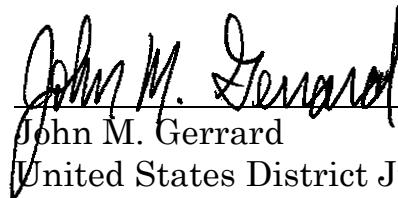
IT IS ORDERED:

1. The defendant's motion for appointment of counsel (filing 74) is denied.

2. The Clerk of the Court shall send a copy of this memorandum and order to the defendant at his last known address.

Dated this 6th day of October, 2015.

BY THE COURT:


John M. Gerrard
United States District Judge